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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,456	02/26/2004	Alexandre A. N. Baptista	37469-8013.US01	5171
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PERKINS COIE LLP P.O. BOX 2168 MENLO PARK, CA 94026			EXAMINER HARMON, CHRISTOPHER R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

JP

Office Action Summary	Application No. 10/789,456	Applicant(s) BAPTISTA, ALEXANDRE A. N.	
	Examiner Christopher R. Harmon	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-15,18-20 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) 38-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-4,6-15,19 and 20 is/are rejected.
- 7) ☐ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 38-41 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 12-15 and 19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13 and 15-17 of copending Application No. 10/789,451. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only difference is the claimed vacuum latch mechanism. It would have been obvious to one of ordinary skill

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in the art to include a vacuum latch for maintaining a coupling of the lid to base as shown by Kristen (US 6,256,968).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-4, 6-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said vacuum latch chamber" in line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968).

Kristen discloses a vacuum packaging appliance for evacuating a container 22, said vacuum packaging appliance comprising: a base with trough 30 defining an upper support surface adapted to receive an open end of said container 22; a lid 26

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operatively associated with said base 30, said lid 26 and said base/trough 30 defining a vacuum chamber 48 there between to receive said open end of said container 22; at least one gasket 42 surrounding said vacuum chamber for directly engaging said container 22 such that said open end of said container 22 is operatively associated with said vacuum chamber 48; a vacuum source 52 operatively associated with said vacuum chamber for selectively evacuating said vacuum chamber 48 and said operatively associated container 22; and a vacuum latch 34 for restraining movement of said base relative to said lid and insures the vacuum integrity of the chamber 48 when said vacuum packaging appliance is in use; see figures 2 and 4. Latches 34 are mounted in chambers in base 24 and rotatable to contact hooks 32 to force lid 26 into a locked/sealed position; see figure 2. Heat sealing mechanism 62 seals the evacuated container 22.

Kristen does not directly disclose forming latch chambers in the lid, however it would have been obvious to one of ordinary skill in the art to reverse the latch 34 and hook 32 mechanisms of Kristen and thereby provide latch chambers in the lid 26. Note that it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Regarding claim 12, trough 30 is considered removable as it is a separate element from base 24.

8. Claims 13-15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968) in view of Bullard (US 5,515,773).

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Kristen does not directly disclose trough 30 removable via tongue and groove sliding capability or a handle structure (hidden or otherwise), however Bullard solves a similar unwanted condensation problem from a steam chamber with collection trough 40 comprising a handle hidden from view behind a door structure in the base; see figure 2. The trough is removed by a tongue and groove sliding construction and then cleaned of contaminants.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the removable trough as taught by Bullard in the invention to Kristen in order to easily empty any undesirable residue/condensation. Note that the language of claim 15 "can be hidden" only requires the trough to be capable of being hidden behind a door.

Regarding claim 19, the vacuum latch chamber is considered operatively associated with the vacuum source as the rotation of latch 34 within (and bringing hook 32 into chamber) is a preliminary step associated with the actuation of the vacuum source.

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kristen (US 6,256,968) in view of Bullard (US 5,515,773) as applied to claims supra, and further in view of Applicant's Admitted Prior Art (AAPA).

Kristen discloses side channel vacuum latches 34 located on opposing ends of the vacuum chamber 48. Kristen does not directly disclose spring mounting the latches. The rotating of latch 34 is performed by stepper motor 39 and when the evacuation process is over the lid is automatically released/opened. Spring mounted

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biased cams/latches are well known in the art and it would have been obvious to one of ordinary skill in the art to use a spring mounted latch in order to automatically release the hooks 32 and thus allow opening of lid 26.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a spring mounted latch in order to automatically release the hooks 32 and thus allow opening of lid 26.

Allowable Subject Matter

10. Claims 1-4, 6-9 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

11. Claims 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. The common knowledge modification above with regard to the spring biased cams is taken to be admitted prior art because applicant failed to traverse the examiner's assertion of official notice.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Harmon whose telephone number is (571) 272-4461. The examiner can normally be reached on Monday-Friday from 9-6.

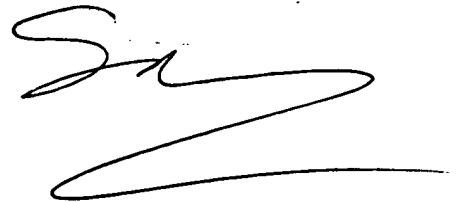
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ch

**SAMEH H. TAWFIK
PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to be 'S. Tawfik', with a long horizontal flourish extending to the right.